

# CLAIMS OF THE VIRGINIA REVOLUTIONARY OFFICERS.

## SPEECH

OF

# HON. J. S. MILLSON, OF VIRGINIA,

IN THE HOUSE OF REPRESENTATIVES, THURSDAY, SEPTEMBER 12, 1850,

*In defence of the Claims of the Revolutionary Officers of Virginia.*

The Report made by Mr. RICHARDSON, from the majority of the committee appointed on the 23d of April last to inquire whether Mr. Ewing, late Secretary of the Interior, had not reopened and paid certain accounts, and whether he had improperly paid interest on others, being under consideration,

Mr. MILLSON said:

Mr. SPEAKER: I regret very much to find myself at this late period of the session compelled to enter upon the discussion of a subject, possessing at any time but few attractions, and rendered the more uninteresting now, from the recent debates which have agitated not only this House but the whole country. But, sir, the report lately made by the select committee, and the remarks of some of the gentlemen who have come forward to sustain it, have imposed upon me a duty, which is not the less necessary to be discharged because it is unexpected and unwelcome.

The honorable chairman of the committee [Mr. RICHARDSON] and the gentleman from Mississippi [Mr. BROWN] have thought proper to advert to what they were pleased to call the singular position of the Democratic Representatives of the State of Virginia. They have alluded to the course we felt it our duty to pursue, in voting against the motion to postpone the consideration of this report. They intimate that it was our purpose to stifle the inquiries which the House had ordered, and that we were led to this course by a desire to protect certain interests of Virginia, which had been assailed or threatened by the report of the committee. Sir, if there be just reason for this imputation, the course of the Representatives from Virginia would, indeed, be unworthy of that State. It never was her desire to prevent a full discussion of all her claims against the United States, nor would she fail to rebuke such of her Representatives as should attempt to secure an undue advantage by any indirection or concealment. Virginia has never come before this Government as a mendicant—she has never solicited the bounty of Congress. Nay, sir, so far from doing so, she has, up to this moment, steadily refused to receive from this Government her portion of the distribution fund, authorized by Congress to be distributed among the States, because she considers such an appropriation of the public revenues, corrupting and unconstitutional. It is not to be presumed, then, that she has the disposition to bring forward any unfounded demands against the United States.

The Representatives from Virginia have been extremely anxious to put themselves right before Congress, with reference to all claims that her citizens might set up; and even in the present case,

where their connection with the parties and the supposed interests of their State might be presumed in some degree to influence their judgments, they had come to a general, and until recently I had supposed, an unanimous conclusion, that the payment of this claim was made without warrant of law. And, sir, they have always intended openly and freely to express this opinion. Why, then, were they driven to a position, seemingly so different from that they desired to occupy? No one can pretend it has been our fault. The reason will be found in the course of the committee themselves. When, by a resolution of this House, they were directed to inquire and report as to the payment made to the heirs of Commodore Barron, we had no reason to suppose that they would make this inquiry a pretext or occasion for a general attack upon all the claims of the State of Virginia against the United States. Neither my colleagues nor myself had the slightest suspicion that this investigating committee were engaged in the consideration of subjects which had never been referred to them—which did not legitimately come within the sphere of their inquiries, and upon which any report they might make would be unnecessary and gratuitous. My honorable friend, the chairman of the committee, will do me the justice to acknowledge that no intimation was ever given us of their purposes. [Mr. RICHARDSON here expressed assent.] It was not until the report was completed, and ready to be submitted to the House, that any of the Representatives from Virginia had the least suspicion that the committee had been engaged in the examination of subjects not embraced within the resolution of the House, and which it was no part of their duty to consider. What was this resolution? It was as follows:

"Resolved, That a select committee of nine be appointed, and that they be instructed to inquire whether the Secretary of the Interior reopened and paid interest to the amount of thirty-one thousand dollars, on the pension granted to Commodore James Barron for services rendered in the Virginia navy during the revolutionary war, after the principal had been fully paid and discharged; and if said interest was paid, was it simple or compound; who was the agent or attorney for said claim; and the authority for such claim, if any."

This, sir, was the language of the resolution as adopted by the House. This was the subject referred to the committee for their investigation. And what have they done? Why, sir, they have undertaken to go into a general examination of the claims of the State of Virginia, growing out of her liabilities for services rendered during the revolutionary war; claims which have been preferred by the State herself, and which have again



and again received the sanction of Congress; and they have impeached their validity, and pronounced them to be unfounded.

The gentleman from Indiana [Mr. DUNHAM] excuses this strange proceeding on the part of the committee by saying, that the question whether this Government is bound to pay "*commutation*" to the officers of the Virginia State line, is so intimately connected with the Barron case, that the examination of the one, necessarily involves the consideration of the other. Sir, this is a very insufficient excuse. There is no necessary connection between the two questions. They depend upon different principles entirely. There was no sort of necessity to show, that commutation was not payable to officers of the line, in order to prove that it had improperly been allowed to an officer in the navy. It was not proper, then, to go into this inquiry. They had no authority whatever for doing so.

But, sir, the real object of the committee has been disclosed in their report. It was not merely to illustrate and enforce their reasoning on the Barron claim, but to influence the future action of the department upon the other claims assailed by them. They could have had no other object in expressing the hope, that their statements "will induce the proper department to return to that rule of construction, with reference to the act of 1832, which has been so long adopted, and has so long prevailed."

Here, then, is the true object. It is to compel the department to return to what the committee regard as the proper construction of the law. The gentleman from Illinois, and the gentleman from Indiana, virtually admitted this, when they declared, that unless Congress interfered, six millions of dollars might be taken from the Treasury to satisfy these Virginia claims. Now, sir, I will not pretend to say that the claims of the State of Virginia against the United States, for the revolutionary services of her citizens, have not been large. Standing here, as one of her Representatives, I shall not say any such thing. *To be sure, they have been large.* It should be the *pride* of her sons, though it may not be their *boast*, that these claims have been large. Let me see the gentleman, who will seek to commend his State to the favorable regard of this House, by declaring that her claims for revolutionary services have been *small*. But, sir, though the claims of Virginia have indeed been large, I must, in all frankness, say to the gentleman from Illinois, and the gentleman from Indiana, that they compliment her much too extravagantly, when they suppose that six millions of dollars will be exhausted in satisfying her remaining demands.

Mr. RICHARDSON made an explanation, almost inaudible to the Reporter. He was understood to say that he had not pretended to give an accurate statement, as he had not made a close estimate.

Mr. MILLSON resumed. If the gentlemen have not gone into a close calculation, they ought to have done so, and not have indulged in loose conjectures. But let us see if we cannot at least make an approach to the true amount that will be required. The act of Congress of 5th July, 1832, under which all these claims arise, provides for the payment of the sums due to the officers of certain numbered regiments or corps. They are only men in all, besides the navy. It is easy, from

this, to calculate the whole number of officers. They could scarcely exceed the number of claims already acted upon, though such as served to the end of the war are still entitled to the difference between commutation and half pay for life. Now, sir, the claims of two hundred and forty-six have already been either refunded to Virginia or paid to the parties, under the act of Congress. Deduct the cases provided for by the first section, which were either for commutation or half pay to supernumerary officers, and in which there is no further claim, amounting to forty—this leaves two hundred and six. Deduct from this the cases provided for by the second section, which were those of supernumerary officers, who, of course, are not entitled to commutation: these amount to thirty—that will leave one hundred and seventy-six. Deduct from this all the navy officers, they not being entitled to commutation, as I admit, under the decisions of our courts—these amount to fifty seven; that leaves one hundred and nineteen. Deduct eleven cases of army commutation paid within two or three years, at the department—there will be one hundred and eight left. Of these about nine tenths are known to be supernumerary, and of course entitled to no further allowance. Deduct this number, say ninety, and only eighteen will be left who can have any claim under the act of 1832. To suppose that the average sum due them for commutation and interest would amount to \$8,000, is to make a very liberal allowance; and deducting from this \$4,000, as the average amount of half pay already received—another liberal estimate—and we have \$4,000 multiplied by eighteen, or \$72,000 as the probable amount that would be paid in discharge of these unsettled Virginia commutation claims, instead of the six millions stated by the gentlemen from Illinois and Indiana.

Should the gentlemen seek to protect their estimate by saying that they included the claims of the navy officers which I have excluded, I am ready to meet them upon that ground, and show that the largest number of probable, not to say possible cases of unsettled demand for commutation by those navy officers who served to the end of the war, (and none others have ever pretended to claim,) would be *six*; increasing the whole amount to \$96,000, still very far within the six millions. In order to support their conjectures, the gentlemen will be obliged to assume the outstanding cases to be two hundred, instead of about eighteen, and the average sums payable to them to be \$30,000, instead of \$4,000.

And now, sir, allow me to ask for what services were these liabilities incurred by Virginia? They were for services rendered by these gallant troops during the revolutionary war.

Mr. BROWN, of Mississippi, (Mr. MILLSON yielding.) The gentleman from Virginia states that these are claims for services rendered to the country in the revolutionary war. Are not these claims founded upon an act of the Virginia Legislature, passed in 1790, after the close of the war?

Mr. MILLSON resumed. I shall come presently to the consideration of that point. The gentleman need not suppose that I will fail to comment upon the erroneous statements of the report upon that subject. I am now, however, inquiring as to the nature and importance of the services rendered.



The regiment first mentioned in the act of 1832, is that commanded by Colonel Gibson. It was known as the first State regiment; but, was it employed in the exclusive defence and service of the State? No, sir. Though Virginia had her full quota of continental troops in the field, this regiment was also placed at the disposal of General Washington. It was sent on for temporary service only; but when, at the bloody battle of Germantown, the ninth Virginia continental regiment, after having penetrated to the very centre of the village, was surrounded by the British forces, and such as survived made prisoners, the Assembly of Virginia immediately passed an act continuing Gibson's regiment in the continental service.

The regiment next mentioned in the act is the second State regiment. This, too, sir, was a long time employed in the continental service, though it had been raised for the particular defence of Virginia. It was sent on to Washington's army to take part in a single battle, but it was permitted to remain at the North two or three years, and it only returned when the terms of enlistment had expired.

Mr. DUNHAM was understood to say that there had been no objection to the payment of the claims of those officers who were referred to in the second section of the act. These had been settled long ago. It was only the claims presented under the third section that the committee repudiated.

Mr. MILLSON. The third section relates only to the claims of these very officers. It provides for nobody but them.

Mr. DUNHAM. The gentleman is mistaken. They were provided for by the second section.

Mr. MILLSON. It is the gentleman who is in error. The second section provides for a portion of them only, and the third section makes provision for adjusting and settling the remainder. The book before me contains the act of 1832. I will send it to the gentleman, that he may read it. I am not sorry, Mr. Speaker, to perceive that the gentleman has fallen into this error, since it gives me reason to hope that but for his mistake, he would not have concurred in that part of the report of the committee which relates to the claims of Virginia.

So much, sir, for two of these regiments. Two others are mentioned in this act, about which I must say a word. They were commanded by Colonel George Rogers Clarke, and by Colonel Crockett. They were both employed in what is described in the act as the Illinois service: that is, in asserting and defending the title of Virginia to that vast region called the Northwestern Territory. Colonel George Rogers Clarke was a remarkable man. In native military genius, he was surpassed by few. This "Hannibal of the West," as he was aptly called, was selected to command the expedition designed for the conquest of the Illinois country. That territory was claimed by Virginia as being within her rightful limits. Several British posts, however, had been established there, and it was to reduce these posts, and confirm her possession of the country, that Clarke was sent out. He descended the Ohio with a small but gallant force, and leaving his boats marched towards Kaskaskias. He entered the town at dead of night, and surprised the fort before the enemy were aware of his approach. By a series of bold and rapid movements he successively re-

duced the remaining posts, and planted the flag of Virginia on the banks of the Mississippi. The inhabitants cheerfully took the oath of allegiance to that Commonwealth, and submitted to her authority.

It was thus, sir, that Virginia vindicated, by arms, her title to that territory which she had always claimed as her own. What did she do next? She immediately organized the whole country on the western side of the Ohio, as a distinct county, called the county of Illinois; and but for the liberality which she afterwards displayed in yielding up the whole of this vast domain, the gentleman from Illinois and the gentleman from Indiana might have been my colleagues on this floor; and instead of assailing the rights and interests of Virginia, they would be now exerting their acknowledged abilities in aiding me to defend them.

It may not be uninteresting, Mr. Speaker, to contrast the views that were then entertained by Virginia, with those which are now fashionable, upon a subject not unlike that which has lately been so much discussed. She acknowledged the obligation and felt the propriety of providing laws for the government of the conquered inhabitants who had submitted to her jurisdiction; but it does not seem to have occurred to her that their own laws would remain in force, except through her permission. The modern theory which makes the rights of the conqueror yield to the laws of the conquered, had probably not then been discovered. Virginia, at least, seems to have thought that these inhabitants could only retain their laws through an express grant from her; and her Legislature provided that "the civil officers shall exercise their several jurisdictions and conduct themselves agreeable to the laws *which the present settlers are now accustomed to.*"

But what, sir, did Virginia do with this magnificent domain—an empire in itself? She gave it away, sir. It was hers by every title, but she gave it to the United States. And what is more, *she dedicated it to "free-soil."* She did not receive ten millions of dollars for the grant. No, sir, she yielded it freely, willingly, to those who disparage her services, revile her institutions, and even threaten her safety; and she has received for it not even the acknowledgment that the gift was hers to bestow. I have heard gentlemen on this floor, again and again deny that Virginia ever had title to this territory. It were vain to argue the point now, but I may be permitted to express regret, that upon this subject, American legislators have sometimes been less just or less learned than British historians have been. I know that in the Continental Congress the delegates from some of the States ventured to impugn her exclusive title to this territory; but they were answered by an indignant Remonstrance. I will quote a passage from it, not merely to show the sense Virginia had of the wrong meditated towards her, but because of its application to events in which we have ourselves been actors within a few days past:

"Should Congress assume a jurisdiction and arrogate to themselves a right of adjudication not only unwarranted by, but expressly contrary to, the fundamental principles of the Confederation, superseding or controlling the internal policy, civil regulations, and municipal laws of this or any other State, it would be a violation of public faith, introduce a most dangerous precedent *which might hereafter be urged to deprive of territory or subvert the sovereignty of any one or more of the United States, and establish in Congress a power which, in*



process of time, must degenerate into an intolerable despotism."

How prophetic is this language! How does it rebuke the pretensions which have been lately set up, as to the power of this Government to determine the territorial rights of the State of Texas! I would, Mr. Speaker, that President Fillmore, before he sent us that most remarkable message, which has lately been the subject of discussion here, could have had his attention called to this remonstrance of the State of Virginia, made some seventy years ago.

Congress, however, acknowledged the title of Virginia to this territory by recognizing her right to impose conditions upon the cession, and by accepting it subject to these conditions. The United States have always held this territory under the grant from Virginia, and when the present Constitution was adopted, the compact between that State and the United States was declared to be as valid as under the Confederation.

And now, Mr. Speaker, let me ask, what is it that Virginia has demanded of the United States? She has asked, after cheerfully giving up this vast domain, what the other States of this Union, without surrendering anything, have already received: simply the payment of her revolutionary debt. There is not a single State that has not received what Virginia has demanded. She has already paid her share of the revolutionary debt of Massachusetts and Pennsylvania, and the rest, and she expects them to pay their share of hers. Congress, in 1790, assumed the payment of the debts incurred by the individual States, "*for the general or particular defence during the war*;" and under the provisions of this law all the other States have already received what they expended. Yet Virginia is made the subject of attack, as if she had asked some great favor of this Government—as if she had sought to be placed upon a better and different footing from the other States—as if she had ever done more than demand that they should do to her what she has already done to them.

Mr. MEADE (with the consent of Mr. MILLSON) here read the following extract from the Executive Documents of 1837-'38, showing the several amounts expended by the States in the revolutionary struggle, and the amounts refunded to them by the General Government, saying that his object was to show that Virginia had not yet received the same proportion of repayments which had been made to the other States:

The seven free States contributed to the expenses of the war..... \$61,971,170  
And had received in pensions, in 1838..... 28,262,897

Balance in their favor..... 33,708,273

The six slave States contributed..... 52,438,123  
And had received, in 1838..... 7,336,367

Balance in their favor..... 45,101,756

Virginia contributed..... 19,085,982  
And received in pensions up to 1830..... 1,969,534

Massachusetts contributed..... 17,964,613  
And received in the same time..... 4,058,031

South Carolina contributed..... 11,523,299  
And received in the same time..... 431,141

New York contributed..... 7,179,983  
And received in the same time..... 7,850,054

The results are equally remarkable, if we have regard to the whole number of pensions, revolutionary and others. The expenses, under this head, for the four years ending in 1837, were \$8,010,051 in the free States, and \$2,588,101 in

the slave States, who not only paid their own share, but \$6,300,000 to the North: New England alone received \$3,924,911, rather more than two dollars a head for every man, woman, and child in her limits. During the same four years she paid in taxes to the Federal Treasury, according to our tables, one dollar and seventy-two cents per head, so that she actually received more in pensions than she paid in taxes.

Mr. MILLSON resumed. These statements presented by my colleague are indeed interesting and they appeal strongly to the sense of justice of the House.

And now, Mr. Speaker, let me inquire, what was the debt that Virginia incurred to her revolutionary officers? And I invite the particular attention of the gentleman from Mississippi, [Mr. BROWN,] that he may see I am quite willing to go into the discussion of the point indicated by him a little while ago. The debt due by Virginia to these officers was half pay for life, which was in certain cases to be compensated by ten years' half pay advanced. By acts of her Legislature, passed during the continuance of the war, she promised half pay for life to those officers of her State line who would serve to the end of the war; and in 1790, she provided a "*compensation*" of this half pay for life, by giving them a gross sum equal to half pay for ten years.

Several of these officers instituted suits against the State for the recovery of this sum, and judgments were rendered in their favor. This was done prior to 1796. In other cases the amounts were paid without suit, the liability of the State having already been the subject of adjudication, and the Legislature not caring to subject the claimants to the necessity of a resort to the courts. These sums were paid by Virginia; they amounted in all to about \$139,000. In the year 1830 judgments were also obtained by other of these officers, or their heirs, against the State of Virginia, in her own supreme court of appeals. These judgments amounted to upwards of \$241,000. They were rendered in a class of cases, in which it was not supposed, before that time, that the State was liable, and they were ably and zealously resisted by her attorney general. Sir, Virginia never made any application to the United States until these last judgments were rendered against her. Then, and not till then, when these heavy liabilities were pressing upon her—liabilities incurred rather more in the general defence, than in her own particular defence, during the revolutionary war—did she come to Congress, and ask that what she had already paid should be refunded to her, and what she was then liable to pay should be discharged by the United States. Her memorial was presented by Mr. Gilmer, who was appointed a commissioner for that purpose; and in that very memorial it is distinctly shown, that nearly all the payments made by Virginia before the year 1796, and which she asked to have refunded, were payments in what are familiarly called commutation cases.

And here, sir, I must notice a remark made on yesterday by the gentleman from Indiana, [Mr. DUNHAM,] in which he did gross, though I cannot but suppose, unintentional injustice to Virginia. He said that Virginia had steadily refused to admit these demands until she ascertained that this Government would agree to them. In this, sir, the gentleman is entirely mistaken. Many of these claims were established against her, as I have shown,



prior to 1796. Many of them were soon afterwards allowed by her Legislature. And yet, though she had paid them out of her own treasury, she did not ask to have them refunded; and she probably never would have done so, but for the heavy additional liabilities to which she was subjected by the decisions of her courts in 1830. These decisions, too, were made before there had been any agreement on the part of this Government to assume these debts. If Congress had refused to pay them, the State would have been obliged to discharge them herself.

The act of July, 1832, was passed in pursuance of this application. It provides for refunding to Virginia the money which she had actually paid in discharge of these claims of her officers, and directs the payment also of the judgments which had already been recovered against her, but which had not yet been discharged. It does not stop there. The liability of Virginia in all similar cases, having been fixed by these decisions of her supreme court of appeals, the act also provides that the department at Washington shall settle and adjust all claims remaining due, upon the principles already decided in that court. This act, sir, covers the whole ground taken by Virginia. It meets every exigency of her application. The first section refunds what she had already paid; the second assumes the payment of the judgments recovered, but not paid; and the third directs that those claims "which have not been paid, or prosecuted to judgments," shall be adjusted and settled by this Government. It would be difficult to frame a law better adapted to the object in view, which was to relieve the State of every liability she had incurred to these revolutionary officers.

Immediately after its passage, claims were preferred at the department for the payment of the "compensation of half pay," with interest, due under the act of 1790. I have shown, sir, that this "compensation" was a gross sum, equal to ten years half pay, and of course equal to five years full pay. But, inasmuch as the compensation of five years full pay, which had been granted by Congress to *continental* officers, was familiarly called *commutation*, and as the word *commutation* was not used in the act of 1832, the department decided that the expression *half pay* in that act, meant half pay for life, and not half pay for ten years, or full pay for five years. In other words, sir, they refused to pay what they called *commutation*. The judgments obtained against Virginia, prior to 1796, had been nearly all for claims of this description. This very act of 1832 refunded to Virginia the money she had paid to discharge them, and yet, because the word *commutation* is not used in the law, it was decided that Congress did not intend that the department should pay any demands but those of half pay for life.

What, sir, is *commutation*? It is a familiar phrase, and not a technical expression. The term is nowhere used in the Virginia act of 1790. It simply means an equivalent in ready money, for half pay for life. The State of Virginia granted to her officers this equivalent in ready money and called it "*compensation of half pay*." She gave them the same compensation of half pay that Congress gave the *continental* officers. The courts of Virginia decided that this meant a gross sum, equal to five years full pay; and yet, though the act of 1832 declares that the department shall adjust and set-

tle these claims for half pay, on the principles of the half-pay cases already decided by the supreme court of appeals, they are rejected because the word *commutation* is not contained in the act.

I beg leave, sir, to read, in further illustration of this subject, an extract from a report submitted to this House some ten years ago, by Mr. Hiland Hall, a gentleman who was distinguished for his bitter and unrelenting opposition to the claims of Virginia. He says:

"The provision of half pay for life being viewed in an unfavorable light in many of the States, and apprehensions existing in the army that it might not be paid, the officers petitioned Congress that it might be commuted for its equivalent in a *compensation* for a limited term of years, or for a sum in gross; and on the 22d day of March, 1783, Congress came to the resolution that the officers of the army, to whom half pay for life had been promised, should be entitled to receive five years full pay in lieu of it; which full pay for five years is familiarly denominated "*commutation*" or "*commutation pay*."

"Familiarly denominated *commutation pay*." And yet, sir, gentlemen here employ this familiar expression as if it was a word of deep meaning; and because they cannot find it in the act of 1832, they conclude that it could not possibly have been the intention of Congress to provide for the *compensation* or equivalent which Virginia granted to her officers in lieu of half pay for life; and that, too, in the very teeth of the act which refunded to her the money she had paid on this very account. Nothing, say they, is authorized by that act but half pay for life. The complaint, sir, was formerly the reverse of this. Mr. Hiland Hall, in a report made upon this very question to the Twenty-seventh Congress, found it convenient to assail these claimants because they would not be satisfied with the *commutation* they had already received, but when the half pay for life amounted to a larger sum, claimed the difference from this Government. He says:

"A portion of the claims to *half pay* had been settled and paid by the State of Virginia. The money paid on those claims had been refunded to Virginia by the appropriation under the first section of the act. It could not have been the intention of Congress to authorize the Secretary to open the settlements which had been made by that State for the purpose of readjusting the claims. Nevertheless, the Secretary of the Treasury in 1832, decided that he would do so in relation to all settlements made since 1796. The allowances by Virginia to those officers had been for the *commutation* of five years full pay in lieu of half pay for life, and in all cases in which the officers lived over ten years, whereby the half pay exceeded the *commutation*, the excess has been allowed." \* \* \* "The payments made by Virginia had been the same that the United States had allowed her *continental* officers, and it is presumed were at the time satisfactory to those officers."

The ground now taken by the select committee seems to be the very reverse of that assumed by Mr. HALL. He complains that in certain cases half pay for life had been allowed, when the parties ought to have been satisfied with the *commutation*; while the committee contend that in no case can any allowance be made, except of half pay for life.

Mr. HALL was understood to say that Mr. MILLSON had not correctly stated the position of Mr. Hiland Hall.

Mr. MILLSON. I have read his very words. The House can judge of their force and meaning.

The gentleman from Indiana says that Virginia wants to put her officers on a better footing than the *continental* officers. Virginia, sir, has never asked or desired any such thing. She put them, by her act of 1790, on precisely the same footing



with the continental officers. He says, also, that these officers want their half pay for life and commutation besides, and he has gone so far as to declare that they have thus even claimed interest on the very money they had in their pockets. I will only say that the gentleman labors under a singular misconception. I undertake to affirm that neither Virginia nor any of her citizens has ever presented a claim which justifies such an imputation.

I must now, sir, briefly notice some of the positions taken by the committee in their report. They tell us that "half pay is one thing, and commutation in lieu of half pay is another and an entirely different thing." No such thing, sir. It is all one and the same thing. I grant you that half pay *for life* is one thing, and half pay *for ten years* is another and a different thing; but the provision made in the third section of the act of 1832 is not confined to cases of half pay for life, as the committee everywhere seem to take for granted. It provides for half pay generally, whether it be for ten years or for life.

Again: they say that half pay was given by the act of 1779, and *commutation* by the act of 1790. This, sir, is a most uncandid, not to say disingenuous, way of stating the fact. It is true that half pay for life was given by the act of 1779, but there is no such expression as "commutation" in the act of 1790. The phrase, as I have stated, is, "compensation of half pay." I have shown that this meant ten years' half pay. Gentlemen declare that it meant five years' *full pay*. They are very anxious to get rid of the expression *half pay*, if they can, because the act of 1832 provides for paying claims for half pay, and it is very necessary for them to show that five years' full pay is very different from ten years' half pay, and then to argue that the Virginia officers claim the former and not the latter. Really, sir, if gentlemen can see the distinction they talk about, they are blessed with a keen discernment. I confess that to me it sounds like a denial of the simplest mathematical truths, that the whole is equal to the parts, and that the parts are not greater than the whole. I rather think that if these gentlemen were claiming as grantees of the four quarters of the earth, they would be very apt to consider themselves entitled to the whole earth. Sir, to attribute to Congress the purposes ascribed to it in this report, is to suppose that in performing a simple act of justice, it meant to

"Palter with us in a double sense:  
To keep the word of promise to the ear,  
And break it to the hope."

They say, also, that "half pay was a war debt, and commutation a bounty after peace." Sir, I deny it. What they are pleased to style *commutation* was not a *bounty*. It was never intended as a bounty. It was only an *equivalent* for the half pay for life. It was only a mode of paying off a debt due to the officers. Virginia was at that very time contesting the claims of many of those officers, and denying her liability for them; and she never supposed that the act of 1790 *increased* the amount she had to pay them. Nor did it; it, in fact, lessened it; for at that very time eight years of their half pay was in arrear, and as it was not at all likely that these officers, or the greater part of them, would die within two years, it was clear that she must gain by an arrangement in which

they gave up their half pay *for life*, for a sum equal only to half pay for ten years.

But they endeavor to make it appear that this sum in gross—called by them commutation—is much larger than the half pay for life, because interest is payable upon that, and not upon half pay. Well, sir, if interest is payable upon it, it is only because the principal was not paid when it became due. Suppose the half pay, as it fell due, year by year, had been paid off by the State, and this Government had refunded it to her sixty years ago, as it was bound to do: What difference would it have made? If the United States pay sixty years' interest on the commutation, it is, as a mere settlement of accounts, just the same as if they had paid the principal sixty years ago; and if the principal sum due for commutation be less, as I have shown it to be, than the principal sum due for half pay for life, they gain rather than lose by paying the former rather than the latter. It is true the United States do not allow interest upon the claims of half pay for life. And why? Simply because the Virginia court of appeals decided that interest is payable upon commutation and not upon half pay, and Congress has ordered these claims to be settled upon the principles established by that court. If Congress did not approve these principles, why did it adopt them? The committee may, if they please, call the construction adopted by the department an unnatural one, but I say that any other construction would have been forced and unnatural.

The committee, for the purpose of showing that Congress never supposed they were allowing commutation by the act of 1832, comment upon a statement in Mr. Gilmer's memorial, that "Virginia never commuted the half-pay claims of her officers." Do they mean to contend that as they understand this statement, it is correct? No, sir. They themselves insist that Virginia, by her act of 1790, did grant commutation. Can they suppose that Mr. Gilmer was ignorant of that fact, when his own memorial contained a list of the commutation claims that Virginia had allowed and paid? They cannot believe it. What, then, did Mr. Gilmer mean? Why, sir, he could only have meant to say, what was the fact, that Virginia never commuted these claims, *as Congress had done*, by directing that the officers should take the sum in gross, and that half pay for life should be discontinued. Virginia only *authorized* her officers to take the one or the other at their election, while Congress wholly changed or *commuted* the mode of payment. Mr. Gilmer is speaking of the reason why he could not precisely state the amount the United States might have to pay, since some of the officers might have refused to give up their yearly pensions for life, and it could not be known at what precise time they died.

But, Mr. Speaker, if there ever could have been any reasonable doubt as to the construction of the act of 1832, it seems to me that the action of the Government since that time must remove all difficulty. As soon as it was ascertained that the department had declined paying to certain claimants the full amount for which Virginia was liable to them, upon the ground that what they demanded was commutation, and that commutation was not payable, a joint resolution was introduced into the House of Representatives for the purpose of explaining the objects and meaning of the act of 1832.



Its title was, "A resolution explanatory of the third section of the act of the 5th of July, 1832, entitled 'An act for liquidating and paying certain claims to the State of Virginia.'" I will not trouble the House by reading the whole resolution, but it recites the principles decided by the court of appeals of Virginia, granting to certain officers of the army the commutation of five years full pay in lieu of half pay for life, and to officers of the State navy and supernumerary officers half pay alone, and directs that these principles shall be applied to the settlement of the claims of these officers. Let it be remembered, sir, that this was the same House of Representatives which had passed the act of 1832, and surely the members must have known what had been their own intention and meaning. The resolution was adopted on the 7th of February, 1833, by a very large majority, but owing to the late period at which it was passed it was not acted upon by the Senate.

But this is not all. An act was passed by Congress in March, 1835, transferring certain duties from the Secretary of the Treasury to the Secretary of War; and it expressly transfers the duties "in relation to Virginia claims for revolutionary services and deficiency of commutation." Here was a clear recognition of the propriety of allowing these claims for commutation. The committee, however, argue that the act simply transfers certain duties, and does not "alter in the slightest degree, the act of the 5th of July, 1832." But they forget that an act simply transferring duties may, at the same time, use terms that interpret the objects of other laws. I do not contend that the act of 1835 granted the authority to settle these claims, but that the expressions used in it show that the power was already granted in the act of 1832.

But, sir, there is one other view which seems to me conclusive of this whole question. The department still refused to pay more than the half pay for life. The claimants then went back to their remedy against Virginia, and recovered judgments against her for their commutation and interest, giving credit, however, for the half pay received. Virginia called upon this Government

to refund to her these payments, amounting to about eighty thousand dollars, and they were refunded to her under the act of August, 1848. This was the civil and diplomatic appropriation bill; and the clause providing for its repayment, expressly refers to it as money paid by her "for half pay and commutation of half pay." If, as the committee argue, commutation was a bounty for which this Government was not liable, why did it, after full consideration, so recently admit its liability, by ordering the return of this money?

Mr. Speaker, I have neither the time nor the inclination to go into a discussion of the question as to the payment made to the heirs of Commodore Barron. I have already said that I believed the decision of the Secretary to be erroneous, and it is my duty to vote in accordance with my convictions. The courts of Virginia had decided, whether rightly or not I will not say, that the officers of the State navy are not entitled to commutation. This is certainly one of the principles declared in Markham's case. Congress has sanctioned and adopted the principles of decision established by our supreme court of appeals, and directed that all these claims shall be settled in accordance with them. In departing from these principles, I think the Secretary committed an error.

But, sir, while I feel myself bound to express my personal opinion of the decision of the Secretary, I take pleasure in saying that I know the parties well who have received the benefit of it. They are all gentlemen of very high standing, and of the most honorable character. They would scorn to prefer any claim against the Government which they supposed to be unfounded or unjust. They have exercised their undoubted right of submitting their case to the consideration of the proper authorities of their country. The decision, after a full investigation of the case, has been favorable to them; and whatever may be the opinion of this House upon it, they doubtless feel that they may conscientiously retain what has been awarded to them by a tribunal, not chosen by them, but to which the Government itself referred them.



